

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed September 22, 2006. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

1. Allowable Subject Matter

Applicants appreciate the Examiner's indication that claims 26 and 27 are allowed and that claims 8, 9, and 29-31 would be allowable if rewritten to overcome rejections under 35 U.S.C. § 112, Second Paragraph and to include all of the limitations of the base claim and any intervening claims. It is noted that claims 8, 9, and 29-31 are not subject to rejections under 35 U.S.C. § 112, Second Paragraph, however.

In that it is believed that every rejection has been overcome, it is respectfully submitted that each of the claims that remains in the case is presently in condition for allowance.

2. Response to Rejection of Claims under 35 U.S.C. § 112, Second Paragraph

Claim 14 has been rejected under 35 U.S.C. § 112, Second Paragraph as allegedly being indefinite for failing to particularly point out and distinctly claim subject matter in the claim.

In response, Applicants note that no language in the claim or disclosure in the written description requires a meaning for the term "substantially equal" other than its ordinary, dictionary meaning. Applicants submit that the modifier "substantially" is a term of degree "implying 'approximate.'" See *Playtex Products Inc. v. Procter & Gamble Co.*, 400 F.3d 901, 904, 73 USPQ2d 2010, 2014-15 (Fed. Cir. 2005), citing *Liquid Dynamics Corp. v. Vaughan Co., Inc.*, 355 F.3d 1361, 1368, 69 USPQ2d 1595, 1600 (Fed. Cir. 2004). Applicants note the Federal Circuit has previously used the definition of "largely but not wholly that which is specified" in association with the term "substantially." *York Prods., Inc. v. Central Tractor Farm & Family Ctr.*, 99 F.3d 1568, 1572-73, 40 USPQ2d 1619, 1622-23 (Fed. Cir. 1996) ("In this case, the patent discloses no novel use of claim words. Ordinarily,

therefore, 'substantially' means 'considerable in . . . extent,' *American Heritage Dictionary Second College Edition* 1213 (2d ed. 1982), or 'largely but not wholly that which is specified,' *Webster's Ninth New Collegiate Dictionary* 1176 (9th ed. 1983)").

On this basis, Applicants submit that a *prima facie* case of non-compliance with § 112, second paragraph has not been established, because when the language of claim 14 is considered as a whole as well as in view of the written description in the specification as it would be interpreted by one of ordinary skill in the art giving the claim term "substantially" and "equal" their ordinary, dictionary meaning, the claim in fact sets forth claim terms with a reasonable degree of precision and particularity. See *In re Moore*, 439 F.2d 1232, 1235, 169 USPQ 236, 238 (CCPA 1971). See also MPEP 2173.05(b) ("The term "substantially" is often used in conjunction with another term to describe a particular characteristic of the claimed invention. It is a broad term. *In re Nehrenberg*, 280 F.2d 161, 126 USPQ 383 (CCPA 1960). . . . The court held that the limitation "which produces substantially equal E and H plane illumination patterns" was definite because one of ordinary skill in the art would know what was meant by "**substantially equal**." *Andrew Corp. v. Gabriel Electronics*, 847 F.2d 819, 6 USPQ2d 2010 (Fed. Cir. 1988)(Emphasis added)).

Claims 16-18 have also been rejected under 35 U.S.C. § 112, Second Paragraph as allegedly being indefinite for failing to particularly point out and distinctly claim subject matter in the claim. Claims 16-18 are canceled without prejudice, waiver, or disclaimer, and therefore, the rejection to these claims are rendered moot. Applicants take this action merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicants reserve the right to pursue the subject matter of these canceled claims in a continuing application, if Applicants so choose, and do not intend to dedicate any of the canceled subject matter to the public.

3. Response to Rejection of Claims under 35 U.S.C. § 102(e)

Claims 22-25 have been rejected under 35 U.S.C. § 102(e) as being anticipated by *Brot* (U.S. Pat. No. 6,522,348). Applicants respectfully traverse this rejection.

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(e).

In the outstanding office action, claim 26 has been indicated as being allowed. Claim 22 shares similar features as claim 26 and is therefore believed to be allowable. Accordingly, the withdrawal of the rejection of claims 22 and 23-25 which depend there from is respectfully requested.

4. Response to Rejection of Claims under 35 U.S.C. § 103(a)

A. Claims 1, 4-7, and 28

Claims 1, 4-7, and 28 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Cook* (U.S. Patent No. 6,155,664) in view of *Bullock* (U.S. Patent No. 5,835,817). It is well-established at law that, for a proper rejection of a claim under 35 U.S.C. § 103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly or explicitly, all elements/features/steps of the claim at issue. See, e.g., *In Re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988), and *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

In the outstanding office action, claims 8 and 9 have been indicated as being allow allowable if rewritten to include all of the limitations of the base claim and any intervening claims. Independent claim 1 has been rewritten to include the limitations of dependent claim 8. Therefore, claim 1 and its dependent claims (including claims 4-7) should be allowed. Claim 9 has been rewritten to include the limitations of base claim 1. Therefore, claim 9 should be allowed.

In the outstanding office action, claims 29-31 have been indicated as being allowable if rewritten to include all of the limitations of the base claim and any intervening claims. Independent claim 28 has been rewritten to include the limitations of dependent 30. Therefore, claim 28 should be allowed. Claim 31 has been rewritten to include the limitations of base claim 28. Therefore, claim 31 should be allowed.

Claims 8 and 30 are canceled without prejudice, waiver, or disclaimer, and therefore, the rejection to these claims are rendered moot. Applicants take this action merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicants reserve the right to pursue the subject matter of these canceled claims in a continuing application, if Applicants so choose, and do not intend to dedicate any of the canceled subject matter to the public.

B. Claims 2, 12, and 13

Claims 2, 12, and 13 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Cook* in view of *Bullock* in further of *Wheeler* (U.S. Patent No. 6,467,888).

As noted above, claim 1 is allowable over the cited art. Therefore, claim 2 which depends from claim 1 is also allowable. In the outstanding office action, claims 8-9 have been indicated as being allowable. Claims 12 and 13 share similar features as claims 8-9 and are therefore believed to be allowable. Accordingly, the withdrawal of the rejection of claims 12 and 13 is respectfully requested.

C. Claims 3 and 6

Claims 3 and 6 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Cook* in view of *Bullock* in further view of *Brot* in further view of *Arthur* (U.S. Patent No. 5,049,898).

As noted above, claim 1 is allowable over the cited art. Therefore, claims 3 and 6 which depend from claim 1 are also allowable.

D. Claim 20

In the outstanding office action, claim 26 has been indicated as being allowed. Claim 20 shares similar features as claim 26 and is therefore believed to be allowable. Accordingly, the withdrawal of the rejection of claim 20 is respectfully requested.

E. Claim 21

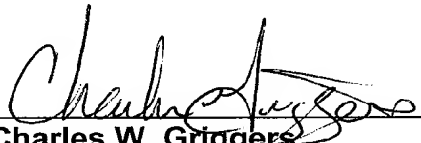
Claim 21 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Cook* in view of *Brot*.

In the outstanding office action, claim 26 has been indicated as being allowed. Claim 21 shares similar features as claim 26 and is therefore believed to be allowable. Accordingly, the withdrawal of the rejection of claim 21 is respectfully requested.

CONCLUSION

For at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,


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